This Recommended Liability Determination was followed by a Recommended Order and Decision in the 1st Quarter of 2004.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF	)	
	)	
Ada Marilu Cuna,	)	**CHARGE NO.: 1999CF0011**
Complainant	)	
	)	**EEOC NO.: 21B 982715**
and	)	
	)	**ALS NO.: 10988**
Progressive Manufacturing Corp.,	)	
Respondents	)	

RECOMMENDED LIABILITY DECISION

This matter is before me following a public hearing conducted on June 3, 4 and 5, 2002 at the offices of the Commission in Chicago. There was no motion for a directed finding from any party. The post-hearing briefs of both Complainant and Respondent were filed on November 1, 2002. Then, on November 18, 2002, an order was issued in which it was noted that Respondent's counsel had notified the Commission that Respondent filed a petition for bankruptcy with the United States Bankruptcy Court for the Northern District of Illinois on October 25, 2002. The order briefly summarized the Commission's position regarding parties in bankruptcy, but did not enter a stay pending the formal presentation of a motion requesting a stay, or other documents relating to the pending bankruptcy.

Subsequently, Complainant filed her reply brief on December 6, 2002 and, on that same date, Respondent's counsel filed a Motion for Leave to Withdraw Instanter in which he reported that Respondent and its bankruptcy counsel had indicated to him that he would not be engaged to prepare or file a reply brief in this matter. On December 19, 2002, Complainant filed a certified copy of an order from the Bankruptcy Court that modified the automatic stay "for the limited purpose of allowing the Administrative Law Judge to make a decision in [this matter] involving Debtor, including an assessment of any monetary damages and attorney's fees related to a

finding of liability." Order Modifying Automatic Stay, U.S. Bankruptcy Court (N.D. Illinois), December 2, 2002. In a Commission order dated January 16, 2003, it was found that after its original counsel was given leave to withdraw without a subsequent appearance being filed by bankruptcy counsel or the bankruptcy trustee, Respondent had waived the filing of a reply brief in this matter. The matter was then taken under advisement and is now ready for decision.

Statement of the Case

. The initial complaint before the Commission, relating to Charge No. 1999CF0011 alleging sexual harassment, was filed on Complainant's behalf by the Illinois Department of Human Rights on August 25, 1999. Respondent's verified answer was filed on October 8, 1999, but a scheduling order for discovery was not entered until February 2, 2000 in that Complainant was given time to obtain counsel. A revised discovery schedule was entered on October 16, 2000 and the schedule was again revised on February 21, 2001 after Complainant's first counsel withdrew. An order entered on July 24, 2001 noted that the discovery process was complete. No dispositive motion was filed by either party and the joint pre-hearing memorandum was filed with the Commission on December 13, 2001. The public hearing in this matter was then scheduled and held on the dates noted above.

Findings of Fact

The following facts are based upon the record of the public hearing in this matter. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be unproven by a preponderance of the evidence or were otherwise immaterial to the issues at hand. Numbers one to ten are those facts that were classified as "uncontested" by the parties in their joint pre-hearing memorandum, although they may be slightly edited here; these items are marked by an asterisk (*). The transcript for this public hearing is in three volumes, with the pages numbered consecutively from one to 498. Citations to the transcript are

indicated as "Tr. ###." Joint exhibits admitted into evidence are denoted "JX-#," Complainant's exhibits are denoted "CX-#" and Respondent's exhibits are denoted "RX-#."

1. Complainant is a female resident of the State of Illinois. *

2. Complainant worked for Respondent from sometime in 1993 to June 30, 1998, when she was discharged. At all times relevant herein, Complainant was an "employee" of Respondent within the meaning of the Illinois Human Rights Act. *

3. Respondent Progressive Manufacturing Corporation is currently located at 1275 Ensell Road, Lake Zurich, Illinois. At all times relevant to this action, Respondent was located at 512 Northgate Parkway, Wheeling, Illinois. Respondent designs and builds progressive dies that form metal into pieces and parts primarily for the computer and automotive industries. It also machines the metal pieces and parts made. *

4. At all times relevant to this case, Respondent employed more than 15 employees and, thus, qualifies as an "employer" within the meaning of the Act. *

5. In April, 1998, Complainant advised her immediate supervisor, Frank Sorrentino, that she was pregnant. *

6. Complainant was supervised by Frank Sorrentino during the time period of January, 1996 through her discharge date. *

7. On June 30, 1998, Complainant told Oliver Osterhues, Respondent's Vice-President and General Manager, that Sorrentino had repeatedly threatened to replace her and fire her after she advised Sorrentino of her pregnancy. Complainant also advised Osterhues that Sorrentino yelled at her in front of other employees. Osterhues told Complainant that he would address her complaints and immediately spoke with Sorrentino. *

8. Later in the day on June 30, 1998, Sorrentino terminated Complainant. *

9. Immediately prior to terminating Complainant, but following her

conversation with Osterhues, Complainant was given a written warning for an alleged violation of company policies or procedures. Specifically, according to the warning, Complainant was written up for "giving instructions to other employees without first consulting with the Department Manager." Complainant refused to sign the warning, claiming that it was untrue and was then discharged by Sorrentino. *

10. Prior to June 30, 1998, Complainant was never disciplined by Respondent. *

11. Following her notice to Frank Sorrentino that she was pregnant, he harassed her through comments, discriminatory actions and, ultimately, by discharging her from her employment on June 30, 1998.

12. Complainant was not properly advised of her rights to continuing medical insurance (COBRA) on July 9, 1998 and the attendance of Frank Sorrentino and Eugene Khait at the meeting on July 9th created a coercive atmosphere there.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(1)(a) respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent was Complainant's employer from February, 1993 to June 30, 1998 and for all periods relevant to the complaint.

4. Because the Department of Human Rights found there was not substantial evidence to support a charge of retaliation, the Commission does not have jurisdiction to render a finding on such a charge in this proceeding.

5. Complainant established by a preponderance of the evidence that she was

harassed by Respondent due to her sex, female, related to pregnancy.

6. Complainant is entitled to an award including back pay, reimbursement of medical expenses due to the loss of insurance benefits, attorney's fees and costs and interest from Respondent (see recommendations at the end of this RLD for the details of the recommended award).

Discussion

A. Respondent's Motion to Exclude Discharge and Retaliation from Consideration at Public Hearing

On June 3, 2002, the first day of the public hearing in this matter, Respondent filed its written Motion to Amend Joint Pre-Hearing Memorandum and Motion in Limine. The Motion noted that Complainant's original charge as filed with the Department of Human Rights included an allegation that she was discharged from employment with Respondent in retaliation for her complaint about discriminatory behavior on the part of supervisor Frank Sorrentino. Subsequently, the Department served notice on the parties that it found substantial evidence to support Complainant's allegations of harassment, but did not find substantial evidence to support the retaliation count. Although the Department's notice included information about the process for requesting a review of this determination, Complainant did not do so and the complaint as filed at the Commission included only the count of the charge concerning harassment "because of her sex, related to pregnancy." Complaint, Paragraph Ten, at 2.

Apparently, however, the parties conducted discovery and drafted the joint pre-hearing memorandum (JPHM) as if the retaliation charge remained viable. It was only while preparing for the public hearing that Respondent's counsel "noticed" that this count was previously stricken by the Department and that decision was not subjected to review. The Motion requests that the JPHM be amended to remove all mention of retaliation and of Complainant's discharge, and that Complainant be precluded from presenting any evidence about retaliation or discharge

during the public hearing due to the lack of jurisdiction of the Commission to act on these issues. The preliminary ruling on the Motion at the public hearing was that evidence relating to retaliation and discharge would be permitted, although the evidence relating to discharge in particular was to be minimal, and that further argument regarding the Motion was to be presented in the post-hearing briefs. Both parties briefed these issues and a final ruling on the Motion will be presented here.

First, I note that contrary to the ruling made at the beginning of the public hearing, extensive testimony and evidence was presented by both parties regarding both retaliation and discharge. I would find that in the end, neither side was precluded from presenting any and all relevant and admissible evidence regarding the discharge.

Retaliation -- It is a well-settled Commission principle that once the Department has dismissed an allegation made in a complainant's charge, and there is either no review or the decision is upheld upon review, that allegation cannot be revived before the Commission. In effect, the Department's action is *res judicata* regarding the substance of the dismissed allegation. Steele and Venture Stores, Inc., Ill. H.R..C. Rep. (1986SF0276, August 2, 1996). While Complainant here presented a significant amount of evidence that could be construed to support a finding of retaliation, the Commission at this time does not have jurisdiction over any such allegation. Therefore, this RLD will not enter a finding concerning Complainant's prior allegation of retaliation. Respondent's Motion to Amend Joint Pre-Hearing Memorandum and Motion in Limine is granted in part by restricting this RLD to the allegation of harassment based on sex related to pregnancy as stated in the complaint. I would note that the reference in the complaint to Section 6-101(A), the retaliation provision in the Human Rights Act, is merely coincident to its recounting of the history of Complainant's original charge, which did include the retaliation allegation that was found wanting by the Department.

Discharge -- While it is accepted in the literature of the Commission to articulate a violation of Section 6-101(A) of the Act by employing the convention "retaliation-slash-[insert adverse action taken against complainant]," the Act itself makes no such distinction among types of "retaliation." The proscribed conduct is simply "retaliation" and one of the elements in proving a *prima facie* case is that an adverse action must be taken against the complainant. Maye v. Illinois Human Rights Comm'n, 224 Ill.App.3d 353, 360, 586 N.E.2d 550, 166 Ill.Dec. 592 (1st Dist. 1991). As noted above, a description of the adverse act is the term that follows the slash. Thus, even though I have found that there is no present jurisdiction at the Commission over Complainant's retaliation claim, that ruling does not in itself also require that all evidence regarding the discharge of Complainant be excluded. Therefore, Respondent's motion is denied to the extent that it requests that evidence concerning Complainant's discharge be excluded from consideration in this RLD. As will be discussed in more detail below, the discharge in this matter is the final episode of harassment endured by Complainant and is therefore quite relevant to the primary allegation in the complaint.

B. Harassment Due to Sex, Related to Pregnancy

Complainant began her employment with Respondent in February, 1993 as a machine operator. In January, 1996, Frank Sorrentino became the production manager at the plant. Later in 1996, he promoted Complainant to the position of data entry operator in which she reported directly to him. In this position, Complainant was a key employee in that she not only did data entry, an important step in the production quality program used by Respondent for monitoring orders, regulating inventory and maintaining quality control, but she also served as a liaison between management and the production employees, many of whom shared her Hispanic background. From the date of her employment in 1993 until April, 1998, including the time she

was supervised both indirectly and directly by Frank Sorrentino, Complainant was never the subject of work-related discipline of any kind, even for a minor or inconsequential offense. Even at the public hearing, Sorrentino and other officials of Respondent characterized Complainant as a good employee ("Even today I do believe that she is a good employee." Sorrentino, Tr. 222; *see also*, Khait at Tr. 293 and Osterhues at Tr. 406).

Then, in April, 1998, Complainant told Sorrentino that she was pregnant. From that time forward until her discharge on June 30, 1998, Sorrentino's conduct and attitude toward Complainant changed dramatically to that of being harassing based on her sex, female and her pregnancy. Complainant credibly testified that beginning that day in April, 1998 and occurring frequently to and including the date of her discharge, Sorrentino stated that he would have to replace her (Tr. 40), that she was going to be gone a long time on maternity leave (even though she never actually requested a maternity leave or specified a time period for it) (Tr. 41) and that she was going to become "fat and ugly" (Tr. 53). In addition, he began to both subject her work to more critical scrutiny with unreasonable turnaround times while also taking responsibilities away from her without cause. Tr. 43. Statements and actions of this kind were never directed at Complainant prior to her notification to Sorrentino that she was pregnant.

Sorrentino's behavior as described in the previous paragraph is sufficient alone to establish that he was harassing Complainant due to her pregnancy. However, there then occurred a bizarre series of events related to supposed transgressions on the part of Complainant that led directly to her discharge, the final act of harassment perpetrated by Sorrentino against her. These are allegations of insubordination regarding a vacation planned by Complainant and that she gave "orders" to a production employee for which she did not have authorization.

On June 30, 1998, Complainant was discharged from her employment with Respondent. The discharge decision by Sorrentino was the culmination of his two-month bias driven, self-

indulgent tantrum directed toward Complainant because of her temerity in becoming pregnant. His pretextual actions were unchecked because Oliver Osterhues, Respondent's vice-president, chose to ignore the obvious signs that his production manager was out of control.

The chain of events began on the morning of June 30th when Complainant sought out Osterhues to complain about the two-month campaign of harassment directed at her by Sorrentino. After she described Sorrentino's conduct to Osterhues, he told Complainant that the three of them – Complainant, Sorrentino and Osterhues – would meet together later to discuss her allegations. About one-half hour later, the meeting took place and Osterhues confronted Sorrentino with Complainant's allegations. Sorrentino became "very angry" and kept saying, "how can you believe her, how can you believe her!" Tr. 63. Sorrentino then said he was going to quit and threw his keys and two-way radio on the desk. This outburst succeeded in diverting attention from the serious allegations made by Complainant with Osterhues imploring Sorrentino to "calm down, calm down" so they could talk; first, Complainant was sent out of the office and then the two men went downstairs to continue the meeting without her. Tr. 63-64.

It was during this adjourned meeting that Sorrentino advised Osterhues that he also needed to discuss some disciplinary issues related to Complainant. This is immediately after the confrontation in Sorrentino's office and involves the presentation of discipline for the first time ever during the five years of Complainant's employment with Respondent. Unbelievably, Osterhues' only response to this suspicious sequence of events was to advise Sorrentino that he should present the two disciplinary charges on separate forms rather than on the same form as Sorrentino presented them to him. Even though Sorrentino's discriminatory motivation for instituting disciplinary proceedings at that particular moment should have been manifestly obvious to this senior manager, Sorrentino was instead blithely sent on his way by Osterhues to have another confrontation with Complainant with his now corrected paperwork! Osterhues had

the opportunity to break the sequence of events leading to Complainant's discharge, but he chose instead to ratify Sorrentino's behavior by allowing him to again direct his anger toward Complainant under the pretext of routine discipline.

After leaving Osterhues, Sorrentino sent for Complainant again, this time without the presence of Osterhues, but instead with quality control manager Eugene Khait present as a "witness." When Complainant came to his office, Sorrentino presented her with two disciplinary warnings, the first alleging she had "bypass(ed) authority" regarding her upcoming vacation and the second stating that she gave unauthorized instructions to a production employee. Again, this occurred less than one hour after Sorrentino was informed of Complainant's allegations concerning his discriminatory behavior and his immediate irrational outburst, coupled with the fact that Complainant was never before the subject of any kind of discipline in over five years of employment with Respondent.

Sorrentino then told Complainant that she must sign the warning notice. However, Complainant declined to do so because she believed both allegations to be untrue. This prompted Sorrentino to inform Complainant that she was discharged. He pointed to the door and told her to gather her personal belongings. Although Complainant expressed a desire to speak with Osterhues, Sorrentino told her he was not in, that she should punch out and leave the premises. Tr. 72-73.

To further illustrate the pretextual nature of the "discipline" Sorrentino attempted to inflict upon Complainant, the following are additional details concerning the "incidents" alleged in the disciplinary forms. On June 24, 1998, Complainant submitted a request for vacation (<u>not</u> maternity leave) for the period July 1 through July 15, 1998. Sorrentino indicated his approval by signing the request on the same day. A few days later, Complainant requested that she be allowed to defer her vacation paycheck to a later date rather than being required to receive it

prior to the approved vacation. Sorrentino refused to authorize this and Complainant went to the company controller, a person who Osterhues testified was second only to himself in knowledge about administration of the vacation policy (Tr. 444), to inquire further about this arrangement. On June 30th, Sorrentino characterized this as insubordination worthy of discipline! The premise of this episode, that Complainant could not seek additional guidance from the company administrator most involved with the accommodation she sought, is absurd and it is obvious that Sorrentino only invoked it to further his campaign of harassment against Complainant.

The second entry on the discipline form concerned an alleged incident in which Complainant countermanded an "order" from Sorrentino regarding how a product would be inventoried. Apparently the product was made in two different colors, but the inventory count would include one of each color taken together as one unit. When Sorrentino noticed that the inventory for the item was "astronomical" (Tr. 209), he went to Steve Wurtz, the line worker involved, who told him that Complainant said to count each item separately, in effect doubling the inventory quantity. Prior to including this charge on the disciplinary form, no supervisor or manager investigated the statement made by Wurtz, nor did they ask Complainant about it. Tr. 269. Wurtz himself was never disciplined for any offense related to this supposed serious violation.

Respondent presented a slightly different version of the discharge scene. In its version, reported in the testimony of Sorrentino and Khait, Complainant is alleged to have screamed at Sorrentino during the second meeting that he should "just fire her now" after the disciplinary form was presented to her. I find that the evidence presented at the public hearing does not support this account, but even if this were true, the extreme and outrageous provocation of the actions of Sorrentino and Osterhues that day were sufficient for me to find that any such outburst on the part of Complainant was justified and did not constitute a knowing and voluntary

termination of employment. In a case similar to the present case in many respects, the Commission found that "an employer may not goad an employee into an expression of anger, … and then credibly cite that expression of anger as an incident justifying termination." Frier and Denny's, Inc., 47, Ill. H.R.C. Rep. 160, 174 (1989). Thus, even if credence could be given to Respondent's version of the second meeting, I would find that Complainant was unlawfully discharged due to the discriminatory bias of Respondent toward her based on her pregnancy.

I have previously indicated that the testimony of Complainant in this matter was especially credible. Further, the discussion above provides ample examples of how the substance of the testimony of Frank Sorrentino was inherently unreliable. However, some additional comment is required concerning Sorrentino. His demeanor as a witness was indicative of a person who was uncomfortable with being confronted with his own questionable conduct. During cross-examination in particular, he did not succeed in concealing a chronic smirking expression and several times he could not stifle laughter. His denial that he was not prejudiced against Complainant due to her pregnancy was not worthy of belief.

For the purposes of this RLD, I find that Sorrentino's justification for Complainant's discharge is pretextual and merely masks his desire to be rid of Complainant because she became pregnant. But the starkness of this finding standing alone does not fully convey the outrageous nature of his actions on June 30, 1998. In employment cases, it is often stated that the adjudicatory body should not substitute its business judgment for that of the Respondent, even if the subject decision is ill conceived, imprudent or based on false (although not discriminatory) assumptions or a shoddy investigation. There is no doubt that the discharge of Complainant, a long-time, reliable and valuable employee, had an immediate effect on the business operation of Respondent. However, the decisions of Sorrentino and Osterhues on June 30, 1998, as proven

by a preponderance of the evidence in this case, can hardly be classified as being "business decisions" even as that term can be impacted by a mistaken or unsound premise.

For two months, Sorrentino behaved in an immature and churlish manner toward Complainant due to her pregnancy, culminating in his highly emotional and unjustified meltdown on June 30th. At the moment he pointed to the door and told Complainant she was discharged, Sorrentino was out of control and acting out his personal prejudices against Complainant for being pregnant. Further, any thought of asserting that his actions were *ultra vires* is eliminated by the failure of Respondent's chief on-site executive, Oliver Osterhues, to assert even a scintilla of mature leadership during the emotionally charged course of events orchestrated by Sorrentino that day. Osterhues had a clear opportunity to deter Sorrentino from proceeding to the second meeting with Complainant, but he did not do so. Regardless of Sorrentino's inability to restrain himself, Respondent is fully responsible for the consequences of his actions because it allowed him to proceed with the ill timed and unjustifiable second meeting with Complainant that day.

Complainant has proven by a preponderance of the evidence that Respondent harassed her due to her sex, female, because of her pregnancy. It is therefore recommended that the Commission sustain the allegation made in the complaint and find Respondent liable for this unlawful conduct.

C. Damages

In light of the recommendation regarding liability, it is necessary to determine the recommended award to be given to Complainant.

Back Pay -- In all sustained cases, it is the Commission's charge to make the prevailing complainant whole. The award may have both monetary and non-monetary elements. Where a complainant is found to be wrongfully discharged, he or she will most often be eligible for back

pay consisting of the difference between what he or she should have received in salary but for the discriminatory conduct of the respondent and the amount actually received through other employment and benefits during the applicable time period. In this case, Complainant is claiming back pay for the entire time after her discharge through the date of the public hearing in that she has yet to meet or exceed the wage she was receiving from Respondent.

At the time of discharge, Complainant was working 40 hours per week at the rate of $10.75 per hour. Her final pay stub at Respondent indicates that she worked 16 hours of overtime at the rate of $16.125 per hour (one and a half times her regular hourly rate). There is no indication in the record that this final check stub did not reflect a typical week for Complainant. Therefore, her weekly salary will be set at $688.00 per week or $2,981.33 per month ($688.00 x 4-1/3) in 1998. The parties stipulated that she would receive a 3% increase annually if she remained at Respondent; therefore, her projected salary for 1999 will be set at $3,070.77; 2000, $3,162.89; and, 2001, $3,257.78. She was unemployed from July, 1998 through the remainder of 1998 and for six months in 1999, or 12 months. Her back pay for this period is $36,312.60. Complainant was employed by Howlan, Inc., a manufacturing company, for the remainder of 1999 and four months in 2000, at total of ten months. She earned a total of $5,765.76 at Howlan in 1999 and $6,438.63 in 2000. Her salary with Respondent would have been $31,076.18 for these ten months. Thus, her back pay for the time she was employed by Howlan is $18,871.79. She was then employed by a company named HydraForce, where she remained employed to and including the date of the public hearing. During the last eight months of 2000, she earned $14,140.96 at HydraForce. Her salary at Respondent would have been $25,303.12, leaving back pay of $11,162.16. Then, in 2001, Complainant earned $24,935.64 from HydraForce while her projected income from Respondent would have been $39,093.32, leaving back pay of $14,157.72. Complainant did not present any documentary evidence

concerning her earnings at HydraForce during the first six months of 2002. However, it is not unreasonable to give her credit for one-half of the back pay amount for 2001 for this period of time. Thus, her back pay for 2002 is $7,078.86. The total recommended gross back pay award to Complainant is $87,583.13.

The award for back pay must be reduced by the amount of unemployment compensation benefits (UCB) received by Complainant prior to her employment at Howlan. She received a total of $7,455.00 for UCB in 1998 (CX-6). Therefore, her net award for back pay is $80,128.13. I note that in its post-hearing brief, Respondent states that Complainant received $6,120.76 for UCB in 1999. However, the evidence of UCB presented by Complainant in CX-6 encompasses six months, generally the extent of eligibility for UCB after any single incidence of unemployment. Further, no evidence was presented by Respondent to verify its claim of UCB paid in 1999, nor was Complainant cross-examined about this subject. Therefore, no credit is given for any UCB in 1999. The award in this matter will include the provision that if Complainant is required at any time to reimburse the state for the amount of UCB she was given, or any portion of it, the amount of her reimbursement payment shall then be restored to her award of back pay against Respondent in order to make her whole as required under the Act.

In its brief, Respondent also asserted that it should receive a credit of $6,867.32 for "the value of the leave that she took after the birth of her child." There is no indication in the brief how this amount was calculated and there is nothing in the record to otherwise support it. In addition, prior to her discharge from Respondent, Complainant had not requested any type of leave in contemplation of the birth of her child and there is no evidence that she intended to do so. Neither is there any evidence in this record that she took a leave from any employer or that she deferred becoming employed due to the birth of her child. No credit for such a leave will be applied against the back pay award shown above.

Emotional Distress -- Complainant makes no claim for emotional distress and no award for this element of damages is included in this RLD.

Insurance Benefits and Medical Expenses -- When Complainant was discharged on June 30, 1998, she was required to immediately leave the premises without being given an exit interview or undergoing any other procedures generally provided to a discharged employee. Then, on July 9, 1998, Complainant returned to Respondent's facility to complete the discharge process. Present at this meeting were Complainant, Roy Salada, Frank Sorrentino and Eugene Khait. The latter participated in the meeting on June 30th when Frank Sorrentino discharged Complainant. During the July 9th meeting, Complainant refused to sign a form that stated "I have received instructions and forms to continue health coverage per COBRA." RX-15. This meeting was conducted in English and there is no evidence that any of the material shown to Complainant that day was printed in Spanish. Further, the meeting was conducted with the unexplained participation of Sorrentino and Khait, neither of whom appear to have brought any knowledge or experience to the meeting relevant to its purpose. I find that Complainant was not properly advised of her rights regarding continued medical insurance coverage and that the atmosphere surrounding the meeting was coercive because of the presence of Sorrentino and Khait in that Complainant last saw these individuals during the outrageous events of June 30th. She is entitled to reimbursement for medical expenses that would have otherwise been paid by insurance.

Complainant submitted invoices related to her pregnancy in the amount of $4,370.70. CX-5 (Group). It is recommended that the award in this case include payment by Respondent to Complainant of $4,370.70.

Other elements of the recommended award, not requiring additional analysis, are specified in the recommendation summary below.

* * *

I note that there is presently no appearance on file in the record of this case for an attorney representing the Respondent. If Respondent intends to participate further in this case, it must be represented by an attorney who has filed an appearance prior to or concurrently with the filing of any pleading or other document. Copies of this RLD will be sent to Respondent's bankruptcy counsel and to the last known address of Respondent's business operations.

Recommendation

Complainant has established by a preponderance of the evidence that she was subjected to harassment due to her sex, related to pregnancy as specified in her complaint. Therefore, it is recommended that the complaint be sustained. Further, it is recommended that Respondent be found liable for an award under the Illinois Human Rights Act. Those elements of the recommended award below that include monetary payments by Respondent are made pursuant to the order of the United States Bankruptcy Court for the Northern District of Illinois entered on December 2, 2002 which modified the automatic stay provisions of the United States Bankruptcy Code for this purpose as permitted by Code Section 362(d). Accordingly, it is recommended that Complainant be awarded the following relief:

A. That Respondent pay to Complainant back pay in the amount of $80,128.13, plus interest on this element of this award pursuant to Section 5300.1145 of the Commission's Procedural Rules, to accrue until payment in full is made by Respondent (the accrual of interest shall not be stayed as provided by Paragraph J below);

B. That if Complainant is ever required to repay any part or all of the unemployment compensation benefits she received, which were deducted from the gross amount of her back pay in arriving at the award noted in Paragraph A above, Respondent will be required to reimburse her for any such payment so that she will be made whole for the full amount of back pay;

C. That Respondent pay Complainant the amount of $4,370.70 as the value of medical benefits lost by virtue of her discharge from Respondent;

D. That Complainant's personnel file or any other file kept by Respondent concerning Complainant shall be purged of any reference to this discrimination charge, this litigation and the outcome of the litigation;

E. That Respondent cease and desist from permitting harassment of any employee in violation of the Illinois Human Rights Act;

F. In addition to desisting from further actions that are unlawful under the Illinois Human Rights Act, Respondent, including its managers, supervisors and employees shall be referred to the Illinois Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent;

G. That any public contract currently held by Respondent be terminated forthwith and that Respondent be barred from participating in any public contract for three years in accord with Section 8-109(A)(1) and (2) of the Illinois Human Rights Act. 775 ILCS 5/8-109(A)(1) and (2);

H. That Respondent pay to Complainant the reasonable attorney's fees and costs incurred as a result of the civil rights violation that is recommended to be sustained in this Recommended Liability Decision, that amount to be determined after review of a properly submitted petition with attached affidavits and other supporting documentation meeting the standards set forth in Clark and Champaign National Bank, 4 Ill. H.R.C. Rep. 193 (1982), to be filed within 21 days after the service of this Recommended Liability Determination. If such a petition is not timely filed, it will be taken as a waiver of attorney's fees and costs;

I. That if Respondent disputes the amount of requested attorney's fees, it must file a written response to Complainant's petition within 21 days of the service of that petition. Failure to do so will be taken as evidence that Respondent does not contest the requested relief. Complainant may file a reply within 14 days after service of Respondent's response; and,

J. Except as otherwise noted above, the relief recommended in Paragraphs A through G shall be stayed pending issuance of a Recommended Order and Decision including resolution of any petition for attorney's fees and costs.

HUMAN RIGHTS COMMISSION

ENTERED: BY: _____
DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
October 31, 2003 ADMINISTRATIVE LAW SECTION

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